

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

HENRY ROSENAU

Defendant.

No. CR06-157MJP

MOTION FOR BILL  
OF PARTICULARS

Noted on Motion Calendar:  
September 16, 2011

**I. MOTION FOR BILL OF PARTICULARS**

The Defendant, Henry Rosenau, by and through his attorney, Craig Platt, respectfully moves this Court, pursuant to Federal Rule of Criminal Procedure 7(f), to direct the Government to supply the following particulars in reference to the Superseding Indictment filed in the above captioned case on September 17, 2008:

1. With respect to Counts One and Two, the date of the earliest statement and/or event upon which the prosecution will rely to prove that the conspiracy existed.

2. With respect to Counts One and Two, the nature of any and all statements and/or events upon which the prosecution intends to rely to prove that the conspiracy existed.

1 3. With respect to Counts One and Two, the date and nature of the earliest statement  
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3 and/or event upon which the prosecution will rely to establish when each defendant joined the  
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5 conspiracy.

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7 4. With respect to Counts One and Two, the date and nature of the earliest statement  
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9 and/or event upon which the prosecution will rely to establish when Henry Rosenau joined the  
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11 conspiracy.

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13 5. With respect to Counts One and Two, the names of all members of the conspiracy, the  
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15 nature of the activities in which they engaged which constituted an overt act, and the nature of  
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17 the criminal activity in which they engaged in furtherance of the conspiracy.

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21 It is respectfully requested that the Court grant this Motion For Bill of Particulars.  
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24 DATED this 6<sup>th</sup> day of September, 2011.  
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28 Respectfully submitted,  
29 PLATT & BUESCHER

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32 s/Craig Platt  
33 Craig Platt  
34 Attorney for Defendant  
35 WSBA #12396  
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## II. LAW AND ARGUMENT

Federal Rule of Criminal Procedure 7(f) provides that the court may direct the government to file a bill of particulars. Fed. R. Crim. P. 7(f). A bill of particulars serves three functions: (1) “to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial”; (2) “to avoid or minimize the danger of surprise at the time of trial”; and (3) “to enable him to plead his acquittal or conviction in bar of another prosecution for the same offense when the indictment itself is too vague, and indefinite for such purposes.” *U.S. v. Ayers*, 924 F.2d 1468, 1483 (9th Cir. 1991)(quoting *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979). A court must consider whether the indictment and all other disclosures made by the government adequately advise the defendant of the charges against him. *United States v. Long*, 706 F.2d 1044, 1054 (9th Cir. 1983)(citing *Giese*, 597 F.2d at 1180). The need for a bill of particulars is not met unless the defendant is otherwise made aware of the theory of the government’s case. *United States v. Ryland*, 806 F.2d 941, 942 (9th Cir. 1986).

A number of courts have recognized that a bill of particulars may be needed in factually complex or multi-defendant cases to provide defendants with the details of the charge to enable them to prepare a defense. *See United States v. Carrier*, 672 F.2d 300, 303 (2d Cir. 1982)(“[a] bill of particulars...may provide the defendant with the evidentiary details needed to establish his defense”); *United States v. Inryco, Inc.*, 642 F.2d 290, 295 (9th Cir. 1981)(holding bill of particulars is “intended to supplement the indictment by providing more detail of the facts upon which the charges are based”); *United States v. Colson*, 662 F.2d 1389, 1391 (11th Cir. 1981) (determining purpose of bill of particulars is to inform defendant of charges in sufficient detail to enable adequate defense preparation); *United States v. Tanner*, 279 F. Supp. 457, 465 (N.D. Ill.

1 1967)(holding in case involving intricate facts, “an indictment may be sufficient to withstand a  
 2 motion to dismiss, and yet insufficiently inform the defendant of the specific facts of the alleged  
 3 offenses”).  
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 6 A Bill of Particulars is especially critical in a complex conspiracy case. *See, e.g., United*  
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 8 *States v. Ramirez*, 54 F. Supp. 2d 25, 30(D.D.C. 1999)(requiring government to disclose names  
 9 of all coconspirators, dates and locations of all meetings, and approximate date on which each  
 10 defendant allegedly joined conspiracy and stating that a “bill of particulars is all the more  
 11 important in a narcotics conspiracy case” because overt acts are not required to be charged);  
 12 *United States v. Walker*, 922 F. Supp. 732, 740 (N.D.N.Y. 1996)(holding three of eight  
 13 defendants entitled to bill of particulars regarding types of narcotics stored and transported and  
 14 dates on which transportation and storage took place); *United States v. Oakar*, 924 F. Supp. 232,  
 15 246 (D.D.C. 1996)(finding it necessary for defense that defendant be provided with identities of  
 16 unnamed coconspirators); *United States v. Strawberry*, 892 F. Supp. 519, 527 (S.D.N.Y. 1995)  
 17 (requiring government to provide names of coconspirators and dates defendants and  
 18 coconspirators who joined and left conspiracy); *United States v. Fine*, 413 F. Supp. 740, 745-46  
 19 (W.D. Wis. 1976) (determining conspiracy defendant’s requests were proper matter for inclusion  
 20 in bill of particulars); *United States v. Tanner*, 279 F. Supp. 457, 473-78 (N.D. Ill. 1967)  
 21 (allowing broad, comprehensive particulars as to each and every aspect of alleged conspiracy).  
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36 In the present case, Mr. Rosenau is charged in Count One of the above captioned  
 37 indictment with Conspiracy to Import Marijuana in violation of 21 U.S.C. §812, and in Count  
 38 Two with Conspiracy to Distribute Marijuana. Both Counts One and Two allege that the  
 39 Conspiracy existed: “Beginning at a time unknown, but within the last five (5) years, and  
 40 continuing through on or about September 21, 2005, within the Western District of Washington,  
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1 and elsewhere...” However, both Counts One and Two fail to state any of the alleged overt acts  
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3 necessary to support the government's charge that a conspiracy existed and that Mr. Rosenau was  
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5 involved in it. In addition, other than Counts One and Two, Mr. Rosenau’s only other charge  
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7 stems from a transaction which allegedly occurred September 21, 2005 (Count 3). Further, Mr.  
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9 Rosenau is charged alone. Therefore, the information sought by this Motion For Bill Of  
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11 Particulars is absolutely necessary to permit Mr. Rosenau to adequately prepare a defense to the  
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13 conspiracy alleged in Count One.

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15 WHEREFORE, it is respectfully requested that this Motion For Bill Of Particulars be  
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17 granted.

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19 DATED this 6<sup>th</sup> day of September, 2011.

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21 Respectfully submitted,  
22 PLATT & BUESCHER

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CERTIFICATE OF SERVICE

I hereby certify that on 9/6/2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telephax.

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